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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,704	06/26/2003	Ger Reynolds	P03151	5105
23702	7590	08/24/2004		EXAMINER
Bausch & Lomb Incorporated One Bausch & Lomb Place Rochester, NY 14604-2701				MILLER, BENA B
			ART UNIT	PAPER NUMBER
			3712	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/606,704	REYNOLDS ET AL.
	<b>Examiner</b> Bena Miller	<b>Art Unit</b> 3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_ .  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the examiner is not sure if applicant is claiming the combination of the apparatus and the plurality of stacked packages or the subcombination of the apparatus only. This in turn, is because while line 1 of the claim appears to indicate that applicant's intention is to claim only the apparatus, the claim recite limitations which are dependent on the plurality of stacked packages (Note claim 1, line 13). In this Office Action, the examiner presumes that applicant's intention is to prosecute the subcombination of the apparatus, in order that the claims are given their broadest reasonable interpretation. Accordingly, all additional limitations that are dependent on the plurality of stacked packages are not considered further structurally limiting with respect to the claimed apparatus.

Regarding claims 1 and 7, it is not clear how the dispenser may be engaged with the container by inserting the one or more push rods through the bottom panel. The claim does not recite the bottom panel having an opening or openings.

Regarding claim 1, it is not clear if the package recited in line 11 of the claim is the same as the plurality of stacked packages recited in line 1 of the claim.

Regarding claim 2, applicant recites in line 1 "a plurality of columns"; however, in line 3 of claim 1, "one or more columns". It is not clear 1) if the plurality of columns is

the same as the columns recited in line 3 of claim 1 and 2) if the container has “one or more columns” or “a plurality of columns” (note, “plurality” requires at least two). Further it is not clear if the “like plurality of rods” in line 2 the same as the “one or more push rods”.

Regarding claim 5, it is not clear if “a plurality of discrete, parallel columns” are the same as the “one or more columns” recited in line 3 of claim 1.

***Allowable Subject Matter***

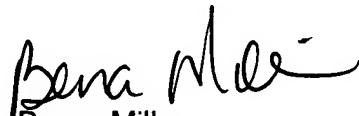
Claims 1-11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Innes teaches a dispensing package. Grenier teaches an egg carton. Sheppard teaches a fuse cap magazine. Sleck teaches a packaging container for sensitive products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 703.305.0643. The examiner can normally be reached on Monday-Friday.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bena Miller  
Examiner  
Art Unit 3712

bbm  
August 20, 2004